Wayne Holloway V04793
CMC EAST
P.O. BOX 8101
SAN LUIS OBISPO, CA 93409

FILED
JUN 17 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY
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JUN 11 2008

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Wayne Holloway, Petitioner,	Case No.______________
vs.	Related No. 08cv0861 JM(AJB)
John Marshall, Warden, Respondent.	Motion For Reconsideration Fed Rule C.P. Rule 60 (en banc review requested)

To the Honorable Justice Jeffrey T. Miller and his Associates of the Federal District Court, comes now Petitioner Wayne Holloway, appearing in propria persona, in this motion for reconsideration of the adjudicated 1651 writ of habeas corpus under case number 08cv0861JM(AJB). Petitioner Holloway request for reconsideration on the following grounds :

I.

Successive Writ is not applicable here where the issue raised under prior Writ was dismissed for technical or procedural reasons rather then on the merits

First, the underlying issue here is the constitutional invalidity of Petitioner's strike prior which was raised in a 2254 Writ of Habeas Corpus and suddenly denied by the southern dist court on the grounds that the United States Supreme Court had curtailed a petitioner's rights to challenge strike prior on constitutional grounds in a 2254 Writ of Habeas Corpus. The dist court then cited Lackawanna County Dist Atty v. Coss 532 US 394 to justify their denial without reaching the merits of Petitioner's constitutional invalidity claim of strike prior.

On the contrary, however, a second or subsequent petition for habeas corpus is not considered successive if the initial habeas petition was dismissed for a technical or procedural reason rather then on the merits. Slack v. McDaniel 529 US 476; Stewart v. Martinez-Villareal 523 US 637; e.g. In re Turner 101 f.3d 1323 (9th Cir 1996)

Petitioner Holloway's constitutional invalidity claim was clearly dismissed on either a technical or procedural purpose without reaching the merits of this claim. The court, once again held that Lackawanna precluded Petitioner Holloway from challenging his strike prior conviction on the basis that he was denied his rights to be present at a readback. (see order filed 5/11/07(Doc No.29) Case No. 06cv0276-LAB(PCL))

Petitioner nonetheless demands reconsideration on the instant 1651 Writ of Habeas Corpus, a concise ruling on the merits, and ask this matter be brought in compliance and/or in conformation with the existing law.

I declare that I am an indigent litigate and present this motion under the penalty of perjury that the foregoing is true and correct supported by the certified record associated to this matter.

Dated : Jun 4, 2008

Respectfully Submitted

Wayne Holloway
In Pro Se

STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

I am the party of the above entitled actions, a citizen of the United States and over the age of eighteen years, and a resident of San Luis Obispo County. My current address is:

Wayne Holloway
California Men's Colony-East
P.O. Box 8101 Room 2178
San Luis Obispo, CA. 93409-8101

I CERTIFY (OR DECLARE), UNDER PENALTY OF PERJURY, THAT THE FOREGOING IS TRUE AND CORRECT.
EXECUTED ON June 4, 2008, AT SAN LUIS OBISPO, CALIFORNIA, 93409-8101.

PETITIONER

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

I AM A RESIDENT OF SAID COUNTY, I AM OVER THE AGE OF EIGHTEEN YEARS AND ~~NOT~~ A PARTY TO THE ABOVE ENTITLED ACTION. MY BUSINESS ADDRESS IS:

Wayne Holloway
CALIFORNIA MEN'S COLONY-EAST
P.O. BOX 8101 / Room 2178
SAN LUIS OBISPO, CALIFORNIA 93409-8101

ON June 4, 2008, I SERVED THE WITHIN Motion for Reconsideration

ON THE PARTY: Dist Atty., Appellate Div.; Clerk of the Sup Court Superior Court Appeals Section

IN SAID ACTION, BY PLACING A TRUE COPY THEREOF IN A SEALED ENVELOPE WITH POSTAGE THEREON PREPAID, IN THE UNITED STATES MAIL, AT CALIFORNIA MEN'S COLONY, SAN LUIS OBISPO, CALIFORNIA, 93409-8101, ADDRESSED AS FOLLOWS:

Dist Atty., Appellate Div	Clerk of the Sup Court
330 W. Broadway, Suite 920	Superior Court Appeals
San Diego, Ca 92101-3803	Section, P.O. BOX 128
	San Diego, Ca 92112

I DECLARE, UNDER PENALTY OF PERJURY, THAT THE FOREGOING IS TRUE AND CORRECT.
EXECUTED ON June 4, 2008, AT SAN LUIS OBISPO COUNTY, CALIFORNIA.

SIGNATURE OF DECLARANT

(REV.6/07)